IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8881 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ABBAS ALLARKHA MIYANA

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 8881 of 2001

MR ANIL S DAVE for Petitioner No. 1

MR KAMEN N SHUKLA for Petitioner No. 1

MR SS PATEL, APP, for Respondents No. 1-3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 17/01/2002

ORAL JUDGEMENT

1. The Commissioner of Police, Ahmedabad City,

Ahmedabad, passed an order on the 25th July, 2001, in exercise of powers under Section 3(2) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short), detaining the petitioner under the provisions of the said Act.

2. The detaining authority took into consideration three registered offences against the petitioner under the Bombay Prohibition Act and branded him as a bootlegger. The detaining authority observed that the petitioner is required to be immediately prevented from pursuing his activities, which are detrimental to public order. The authority also considered the possibility of resorting to less drastic remedies and came to a conclusion that detention under PASA Act is the only remedy that can be resorted to.

3. Learned advocate for the petitioner, Mr. Shukla assails this order on the ground that the detenu was bailed out in two cases and was not arrested in the 3rd and the authority has considered that when he is arrested, he will be produced before the court and he may apply for bail and may obtain bail and, on being released, may continue his activities and, therefore, he is required to be detained. Mr. Shukla submitted that the subjective satisfaction arrived at by the detaining authority in detaining the petitioner, therefore, is vitiated. He, therefore, urged that the petition may be allowed and the impugned order of detention may quashed.

4. Mr. S.S. Patel, learned Assistant Government Pleader, has opposed this petition.

5. There is no dispute about the factual aspects. In two offences registered against the petitioner-detenu, he was bailed out by a Court of competent jurisdiction. So far as the third offence is concerned, the grounds of detention itself indicate that the detenu was not arrested in connection with that offence, but anticipating an application for bail and grant of bail, and on being released on bail, he may continue his anti-social activities, the detaining authority deemed it necessary to detain the petition. In this regard, decision of the Apex Court in the case of Amritlal v. Union Government, AIR 2000 SC 3675 may be profitably referred to. It was observed that the satisfaction of the authority based on likelihood of detenu moving an application for bail is not sufficient. That likelihood of detenu moving an application for bail is different

from likelihood to be released on bail and, therefore, the order of detention was quashed. This judgment would be squarely applicable to the facts of the present case. In the instant case, there is no material to show that the subjective satisfaction recorded by the detaining authority that, on his arrest and on his producing before the Magistrate, he may be taken in judicial custody and he may apply for bail and that he may obtain bail and, thereafter, may continue his activities. Therefore, the subjective satisfaction recorded by the detaining authority for immediate need for detaining the detenu is without any basis. Hence, this petition deserves to be allowed.

6. In the result, the petition is allowed. The impugned order of detention dated the 25th July, 2001, passed against the detenu is hereby quashed and set aside. The detenu-Abbas Allarkha Miyana is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute with no orders as to costs.

[A.L. DAVE, J.]

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